

Message Text

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PAGE 01 BONN 03885 01 OF 02 031949Z
ACTION EUR-12

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-04 H-01 INR-07 L-03
NSAE-00 NSC-05 PA-01 PRS-01 SP-02 SS-15 USIA-06
TRSE-00 IO-13 OMB-01 ACDA-07 /079 W
-----032027Z 008489 /43

R 031934Z MAR 77
FM AMEMBASSY BONN
TO SECSTATE WASHDC 6131
INFO AMEMBASSY BERLIN
AMEMBASSY LONDON
AMEMBASSY MOSCOW
AMEMBASSY PARIS
AMEMBASSY ROME
AMCONSUL BREMEN
AMCONSUL DUSSELDORF
AMCONSUL FRANKFURT
AMCONSUL HAMBURG
AMCONSUL MUNICH
AMCONSUL STUTTGART
USMISSION USBERLIN

LIMITED OFFICIAL USE SECTION 01 OF 02 BONN 03885

E.O. 11652: N/A
TAGS: PINT, GW
SUBJECT: FEDERAL CONSTITUTIONAL COURT RULES THAT
GOVERNMENT VIOLATED CONSTITUTION DURING
1976 ELECTION CAMPAIGN

BEGIN SUMMARY: IN A SURPRISE RULING WITH FAR-REACHING
IMPLICATIONS, THE FEDERAL CONSTITUTIONAL COURT HAS HELD
IN FAVOR OF A CDU/CSU COMPLAINT THAT THE FEDERAL
GOVERNMENT VIOLATED THE CONSTITUTION ON SEVERAL COUNTS
BY ITS USE OF PUBLIC FUNDS FOR MASSIVE PROPAGANDA
PURPOSES DURING LAST YEAR'S ELECTION CAMPAIGN. THERE
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PAGE 02 BONN 03885 01 OF 02 031949Z

IS WIDESPREAD BELIEF THAT THIS RULING WILL SET A LONG-
NEEDED HIGHER STANDARD OF CONDUCT FOR FUTURE ELECTIONS
IN THE FEDERAL REPUBLIC. ALTHOUGH IN PAST ELECTIONS
ALL PARTIES HAVE NO DOUBT VIOLATED THE LIMITS OF
ACCEPTABLE BEHAVIOR WHICH KARLSRUHE HAS NOW SPELLED
OUT, FOR THE MOMENT THE CDU/CSU IS RELISHING ITS
VICTORY AND TAKING GREATER COMFORT FROM THE DECISION

THAN EITHER THE SPD OR THE FDP. END SUMMARY.

1. ON MARCH 2 THE FEDERAL CONSTITUTIONAL COURT (FCC) IN KARLSRUHE RULED IN FAVOR OF A CDU/CSU COMPLAINT, FILED IN JULY 1976, THAT THE FEDERAL GOVERNMENT HAD VIOLATED THE CONSTITUTION IN SEVERAL RESPECTS BY ITS CONDUCT DURING LAST YEAR'S NATIONAL ELECTION CAMPAIGN. THE FCC SPECIFICALLY CITED AS UNCONSTITUTIONAL THE GOVERNMENT'S MASSIVE USE OF PUBLIC FUNDS TO FINANCE THE ISSUANCE OF LEAFLETS, PAMPHLETS AND OTHER "INFORMATION" MATERIAL DURING THAT CAMPAIGN. THE DECISION, PASSED BY THE SECOND SENATE BY A VOTE OF 5-3, APPLIES BROADLY TO ALL LEVELS OF GOVERNMENT IN THE FRG. IT MAKES THE FOLLOWING SPECIFIC POINTS:

A. THROUGH ITS ISSUANCE DURING THE CAMPAIGN OF PUBLICATIONS FINANCED OUT OF TAX MONIES, THE FEDERAL GOVERNMENT VIOLATED THE CONSTITUTIONAL REQUIREMENT THAT STATE INFLUENCE BE HELD OUT OF THE OPINION-FORMING PROCESS.

B. BY FAILING TO PREVENT THE COALITION PARTIES (SPD AND FDP) FROM DISTRIBUTING AS CAMPAIGN MATERIAL GOVERNMENT PUBLICATIONS WHICH HAD BEEN FINANCED OUT OF PUBLIC FUNDS, THE FEDERAL GOVERNMENT VIOLATED THE PRINCIPLE THAT POLITICAL PARTIES MUST HAVE EQUALITY OF OPPORTUNITY IN ELECTIONS.

C. IT IS UNCONSTITUTIONAL FOR ORGANS OF LIMITED OFFICIAL USE

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PAGE 03 BONN 03885 01 OF 02 031949Z

GOVERNMENT TO IDENTIFY THEMSELVES PRIOR TO AN ELECTION WITH SPECIFIC PARTIES OR CANDIDATES, OR TO USE PUBLIC FUNDS TO SUPPORT OR OPPOSE POLITICAL PARTIES OR CANDIDATES.

D. IT IS INCOMPATIBLE WITH THE LIMITED MANDATE OF THE BUNDESTAG AND THE FEDERAL GOVERNMENT THAT INCUMBENT OFFICIALS IN EFFECT USE PUBLIC FUNDS DURING A CAMPAIGN TO SUPPORT THEIR QUEST FOR RE-ELECTION.

2. THE FCC RULING LAID DOWN A NUMBER OF CRITERIA FOR DISTINGUISHING ALLOWABLE PUBLIC INFORMATION WORK FROM UNCONSTITUTIONAL CAMPAIGNING BY A GOVERNMENT. IT DECLARED THAT PUBLIC INFORMATION WORK ENDS AT THE POINT WHERE CAMPAIGNING BEGINS, AND THAT THIS LIMIT IS PASSED WHEN (A) THE PROPAGANDA CONTENT OF A PUBLICATION CLEARLY EXCEEDS ITS INFORMATIVE CONTENT OR (B) THERE IS A NOTED RISE IN NORMALLY PERMISSIBLE PUBLIC INFORMATION WORK PRIOR TO AN ELECTION. THE COURT

DIRECTED ALL GOVERNMENTS IN THE FEDERAL REPUBLIC TO
MAKE SURE THAT POLITICAL PARTIES, AND THEIR SUPPORTERS,
DO NOT USE OFFICIAL PUBLICATIONS FOR CAMPAIGN PURPOSES.
IT NOTED THAT BOTH BONN AND LAENDER GOVERNMENTS HAD
EXCEEDED PERMISSIBLE LIMITS IN RECENT CAMPAIGNS, AND

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PAGE 01 BONN 03885 02 OF 02 031954Z
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TRSE-00 IO-13 OMB-01 ACDA-07 /079 W
-----032028Z 008568 /44

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LIMITED OFFICIAL USE SECTION 02 OF 02 BONN 03885

THAT DURING THE 1976 NATIONAL CAMPAIGN THE FEDERAL
GOVERNMENT HAD MASSIVELY EXCEEDED THOSE LIMITS. THE
COURT DECLARED THAT, THE NEARER THE HOT-PHASE OF AN
ELECTION CAMPAIGN, THE GREATER THE LIKELIHOOD THAT
GOVERNMENT-ISSUED PROPAGANDA WILL AFFECT THE VOTE.
ACCORDINGLY, THE COURT BANNED GOVERNMENT PUBLICATION
OF ANY "ACHIEVEMENT REPORT" OR SIMILAR LITERATURE
DURING THE PRE-ELECTION PERIOD. IT RECOMMENDED THAT

THIS "STERILE" PERIOD, FOR NATIONAL ELECTIONS, BEGIN ON
THE DAY WHEN THE FEDERAL PRESIDENT FIXES THE ELECTION
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PAGE 02 BONN 03885 02 OF 02 031954Z

DATE -- I.E., ABOUT SIX MONTHS BEFORE THE VOTE IS HELD.

3. REACTION TO THIS SURPRISE RULING HAS BEEN POSITIVE
IN A BROAD SENSE. HOWEVER, SPOKESMEN FOR THE SPD AND FDP HAVE
UNDERSTANDABLY TAKEN A LESS ENTHUSIASTIC LINE THAN HAS
THE CDU/CSU.

A. FRG SPOKESMAN BOELLING QUICKLY ANNOUNCED THAT
THE FEDERAL GOVERNMENT WILL OF COURSE "RESPECT" THE
RULING, BUT HE DESCRIBED AS "VERY NARROW" THE LIMITS
WHICH THE COURT HAD LAID DOWN FOR ACCEPTABLE PUBLIC
INFORMATION WORK BY A GOVERNMENT. BOELLING SUGGESTED
THAT, GIVEN THE FACT THAT ELECTIONS ARE HELD EACH
YEAR AT SOME LEVEL IN THE FEDERAL REPUBLIC, ALL PARTIES
REACH AGREEMENT ON THE DEFINITION AND DURATION OF THE
"STERILE" PRE-ELECTION PERIOD. HE DECLARED THAT
CDU/CSU-CONTROLLED GOVERNMENTS HAVE ALSO TRANSGRESSED,
AND THAT THE KARLSRUHE JUDGMENT SHOULD GIVE NO PARTY
CAUSE FOR JUBILATION.

B. IN THE BUNDESTAG BUDGET DEBATE ON MARCH 3,
FINANCE MINISTER APEL MADE SIMILAR POINTS. HE CLAIMED
THAT (A) THE FCC HAD UPHELD THE VALIDITY OF PUBLIC
INFORMATION WORK BY GOVERNMENTS, "WITHIN BOUNDS,"; (B)
THE FEDERAL GOVERNMENT AGREES THAT BONN AND THE LAENDER
MUST SCRUPULOUSLY STAY OUT OF EACH OTHER'S ELECTION
CAMPAIGNS; AND (C) THESE LINES HAD BEEN IMPRESSIVE
IN PAST YEARS AND ALL PARTIES HAD OVERSTEPPED THEM,
AT BOTH THE FEDERAL AND THE STATE LEVEL.

C. THE OPPOSITION HAS TAKEN DELIGHT IN ITS
VICTORY. CDU SECRETARY GENERAL BIEDENKOPF HAS CLAIMED
THAT THE COURT, BY RULING THAT THE FEDERAL GOVERNMENT
MISUSED PUBLIC FUNDS IN AN UNCONSTITUTIONAL WAY, HAS
FURTHER ERODED THE LEGITIMACY OF A COALITION
WHICH HAD ALREADY BEEN COMPROMISED BY THE NARROWNESS
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PAGE 03 BONN 03885 02 OF 02 031954Z

OF THE VOTE LAST OCTOBER 3. HE QUESTIONED WHETHER THE
PRESENT COALITION HAS A SUFFICIENT BASIS OF LEGITIMACY
TO CONTINUE IN OFFICE.

D. FDP SPOKESMEN HAVE TAKEN A MORE NEUTRAL ATTITUDE. IN THE MARCH 3 BUNDESTAG DEBATE, HOPPE (BERLIN DEPUTY) OPINED THAT THE FCC VERDICT AFFECTED ALL PARTIES AND ALL GOVERNMENTS IN THE FEDERAL REPUBLIC, WITHOUT EXCEPTION.

E. MOST PAPERS HAVE HAILED THE KARLSRUHE VERDICT AS A CLEAR VICTORY FOR EFFORTS TO CURB PUBLIC INFORMATION EXCESSES WHICH ALL PARTIES HAVE COMMITTED IN RECENT CAMPAIGNS.

5. THE ABOVE SUMMARY IS BASED ON MEDIA ACCOUNTS, BECAUSE THE EMBASSY HAS NOT YET SEEN A COPY OF THE COURT'S LENGTHY DECISION. WE MAY, AFTER ANALYZING THE DOCUMENT, HAVE FURTHER COMMENTS. AT THE MOMENT, IT SEEMS CLEAR THAT THIS VERDICT HAS FAR-REACHING IMPLICATIONS FOR THE WAY ELECTIONS ARE HELD IN THIS COUNTRY-AT THE FEDERAL, LAND AND LOCAL LEVEL. THE GERMANS THEMSELVES ARE NOW TRYING TO DETERMINE THE FULL EXTENT OF THOSE IMPLICATIONS. IN TRUTH, THE FEDERAL GOVERNMENT LAST YEAR WAGED A MASSIVE, AND BY MOST STANDARDS A ONE-SIDED, PROPAGANDA CAMPAIGN ON BEHALF OF ITS COALITION PARTIES. THAT SAID, HOWEVER, FEW ARE TAKING SERIOUSLY THE PROSPECT OF HOLDING NEW ELECTIONS -- A PROSPECT AT WHICH BIEDENKOPF HINTED ON MARCH 2. WE BELIEVE THAT THE KARLSRUHE VERDICT HOLDS MORE MEANING FOR THE FUTURE THAN THE PAST. IT WILL IN ALL LIKELIHOOD FORCE ALL PARTIES, AND PARTICULARLY THOSE IN POWER, TO EXERCISE GREATER CARE IN FUTURE ELECTIONS.

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: PRESS COMMENTS, ALLEGATIONS, ELECTION CAMPAIGNS, POPULAR SUPPORT
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Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1977BONN03885
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Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
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From: BONN
Handling Restrictions: n/a
Image Path:
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Legacy Key: link1977/newtext/t19770398/aaaadinr.tel
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Litigation Code IDs:
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Litigation History:
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Message ID: e2b3d7be-c288-dd11-92da-001cc4696bcc
Office: ACTION EUR
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
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Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: n/a
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 09-Nov-2004 12:00:00 am
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 3223506
Secure: OPEN
Status: NATIVE
Subject: FEDERAL CONSTITUTIONAL COURT RULES THAT GOVERNMENT VIOLATED CONSTITUTION DURING 1976 ELECTION CAMPAIGN
TAGS: PINT, GE
To: STATE
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/e2b3d7be-c288-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009